IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

Crl.MC.No. 3295 of 2007()

ST.1795/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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(CRIME NO.47/06 OF KALAMASSERY POLICE STATION,KALAMASSERY)

PETITIONER: ACCUSED:

AJAY ABRAHAM ANTONY, S/O.T.I.ANTONY,
AGED 20, THAYANKARI HOUSE, MARKET ROAD,
EDAPPALLY, KOCHI.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS: COMPLAINANT & DEFACTO COMPLAINANT:

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1. **STATE OF KERALA, REPRESENTED BY**
   S.I. OF POLICE, KALAMASSERY, POLICE STATION,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. **THOMAS, S/O.ETTEERA,**
   THAYANKARI VEEDU, GODOWN ROAD,
   EDAPPALLY TALL JUNCTION, ERNAKULAM DISTRICT.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J

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Crl.M.C. No. 3295 Of 2007

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Dated this the 30th day of October, 2007

ORDER

The petitioner faces indictment in a prosecution under Sections 341 and 323 IPC. Cognizance has been taken by the learned Magistrate on the basis of final report submitted by the Police after due investigation. Annexuure A is the copy of the final report submitted by the Police. The petitioner has entered appearance before the learned Magistrate. He has already been enlarged on bail also. It is submitted that the particulars of offence has already been read over to the petitioner and his plea recorded. It is at this stage that the petitioner has come to this Court under Section 482 Cr.P.C with a short prayer to invoke the extra ordinary inherent jurisdiction to quash the proceedings against the petitioner.

2. What is the reason? The learned counsel for the petitioner submits that the allegations are false and unacceptable and that in these circumstances continuation of the prosecution amounts to failure and miscarriage of justice. The de facto complainant is the parental uncle of the petitioner. There was strain in their relationship. Because of that strain, the de facto complainant has raised false allegations against the petitioner.

3. I must alertly remind myself of the nature,quality and contours of the jurisdiction which I am called upon to invoke and exercise. The jurisdiction which is sought to be invoked is the extraordinary inherent jurisdiction available under Sec.482 Cr.P.C. It is by now trite that such jurisdiction has to be invoked sparingly and in exceptional cases only in aid of justice. Whether the allegations are true or false cannot obviously be decided in proceedings under Section 482 Cr.P.C. There cannot be a contention in the facts of the case that allegations even if accepted would not amount to the offences alleged. The final report shows that the prosecution has cited six witnesses of which one is the de facto complainant and two are eye witnesses to the occurence. A doctor has been cited to prove the wound certificate issued. Witnesses 5 and 6 are Police officials who have roles to play in the investigation of the crime and the lodging of the final report. The prime contention of the accused is that oral evidence which witnesses 1 to 3,(victim and two eye witnesses) are to render cannot be accepted. Obviously that request cannot be accepted in proceedings under Section 482 Cr.P.C. This Court again cannot now endeavour to assess and evaluate the credibility of the witnesses. Hence this petition cannot be accepted.

4. This petition is in these circumstances dismissed. The dismissal of this petition will not in any way fetter the rights of the petitioner to raise all his contentions before the learned Magistrate in the course of the trial.

5. Finally the learned counsel for the petitioner submits that unnecessary personal appearance of the petitioner may be insisted by the learned Magistrate. I find no reason for such insistence on personal appearance of the accused . The offences alleged are summons offences and Section 205 Cr.P.C can certainly be pressed into service by the petitioner. If there is no dispute regarding the identity of the accused, personal insistence need not be insisted even at the stage of trial. It is for the petitioner to make appropriate application. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same.

6. With the above observations, this Crl.M.C is dismissed.

(R.BASANT, JUDGE)

sj